

# SENATE BILL No. 818

September 15, 2009, Introduced by Senators HARDIMAN and McMANUS and referred to the Committee on Appropriations.

A bill to amend 2007 PA 36, entitled  
"Michigan business tax act,"  
by amending section 437 (MCL 208.1437), as amended by 2008 PA 578.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 437. (1) Subject to the criteria under this section, a  
2       qualified taxpayer that has unused credits or has a preapproval  
3       letter issued after December 31, 2007 and before January 1, 2013,  
4       or a taxpayer that received a preapproval letter prior to January  
5       1, 2008 under section 38g of former 1975 PA 228 and has not  
6       received a certificate of completion prior to the taxpayer's last  
7       tax year, provided that the project is completed not more than 5  
8       years after the preapproval letter for the project is issued unless  
9       extended under subsection (9) or if it is a multiphase project not

1 more than 10 years after the preapproval letter, as amended, if  
2 applicable, for the project is issued, or an assignee under  
3 subsection (20), (21), or (22) may claim a credit that has been  
4 approved under section 38g of former 1975 PA 228 or under  
5 subsection (2), (3), or (4) against the tax imposed by this act  
6 equal to either of the following:

7 (a) For projects approved before April 8, 2008, if the total  
8 of all credits for a project is \$1,000,000.00 or less, 10% of the  
9 cost of the qualified taxpayer's eligible investment paid or  
10 accrued by the qualified taxpayer on an eligible property provided  
11 that the project does not exceed the amount stated in the  
12 preapproval letter, as amended. For projects approved, or amended,  
13 on and after April 8, 2008, if the total of all eligible  
14 investments for a project are \$10,000,000.00 or less, up to 12.5%  
15 of the costs of the qualified taxpayer's eligible investment paid  
16 or accrued by the qualified taxpayer on an eligible property or up  
17 to 15% of the costs of the qualified taxpayer's eligible investment  
18 paid or accrued by the qualified taxpayer on an eligible property  
19 if the project is designated as an urban development area project  
20 by the Michigan economic growth authority to the extent that the  
21 project does not exceed the amount stated in the preapproval  
22 letter, as amended, or, until December 31, 2010, up to 20% of the  
23 costs of the qualified taxpayer's eligible investment paid or  
24 accrued by the qualified taxpayer on an eligible property if the  
25 project is designated as an urban development area project by the  
26 Michigan economic growth authority. If eligible investment exceeds  
27 the amount of eligible investment in the preapproval letter, as

1 amended, for that project, the total of all credits for the project  
2 shall not exceed the total of all credits on the certificate of  
3 completion.

4 (b) For projects approved before April 8, 2008, if the total  
5 of all credits for a project is more than \$1,000,000.00 but  
6 \$30,000,000.00 or less and, except as provided in subsection  
7 (6)(b), the project is located in a qualified local governmental  
8 unit, a percentage as determined by the Michigan economic growth  
9 authority not to exceed 10% of the cost of the qualified taxpayer's  
10 eligible investment as determined under subsection (11) paid or  
11 accrued by the qualified taxpayer on an eligible property. For  
12 projects approved, or amended, on and after April 8, 2008, if the  
13 total of all eligible investments for a project is more than  
14 \$10,000,000.00 but \$300,000,000.00 or less, up to 12.5% of the  
15 costs of the qualified taxpayer's eligible investment as determined  
16 under subsection (11) paid or accrued by the qualified taxpayer on  
17 an eligible property that, except as provided in subsection (6)(b),  
18 is located in a qualified local governmental unit, up to 15% of the  
19 cost of the qualified taxpayer's eligible investment as determined  
20 under subsection (11) paid or accrued by the qualified taxpayer on  
21 an eligible property if the project is designated as an urban  
22 development area project by the Michigan economic growth authority,  
23 or, until December 31, 2010, up to 20% of the costs of the  
24 qualified taxpayer's eligible investment as determined under  
25 subsection (11) paid or accrued by the qualified taxpayer on an  
26 eligible property if the project is designated as an urban  
27 development area project by the Michigan economic growth authority.

1 If eligible investment exceeds the amount of eligible investment in  
2 the preapproval letter, as amended, for that project, the total of  
3 all credits for the project shall not exceed the total of all  
4 credits on the certificate of completion.

5 (2) If the cost of a project will be \$2,000,000.00 or less, a  
6 qualified taxpayer shall apply to the Michigan economic growth  
7 authority for approval of the project under this subsection. An  
8 application under this subsection shall state whether the project  
9 is a multiphase project. Subject to the limitation provided under  
10 subsection (31), the chairperson of the Michigan economic growth  
11 authority or his or her designee is authorized to approve an  
12 application or project under this subsection. Only the chairperson  
13 of the Michigan economic growth authority is authorized to deny an  
14 application or project under this subsection. A project shall be  
15 approved or denied not more than 45 days after receipt of the  
16 application. If the chairperson of the Michigan economic growth  
17 authority or his or her designee does not approve or deny the  
18 application within 45 days after the application is received by the  
19 Michigan economic growth authority, the application is considered  
20 approved as written. If the chairperson of the Michigan economic  
21 growth authority or his or her designee approves a project under  
22 this subsection, the chairperson of the Michigan economic growth  
23 authority or his or her designee shall issue a preapproval letter  
24 that states that the taxpayer is a qualified taxpayer; the maximum  
25 total eligible investment for the project on which credits may be  
26 claimed and the maximum total of all credits for the project when  
27 the project is completed and a certificate of completion is issued;

1 and the project number assigned by the Michigan economic growth  
2 authority. If a project is denied under this subsection, a taxpayer  
3 is not prohibited from subsequently applying under this subsection  
4 for the same project or for another project. The Michigan economic  
5 growth authority shall develop and implement the use of the  
6 application form to be used for projects under this subsection.

7 (3) If the cost of a project will be for more than  
8 \$2,000,000.00 but \$10,000,000.00 or less, a qualified taxpayer  
9 shall apply to the Michigan economic growth authority for approval  
10 of the project under this subsection. An application under this  
11 subsection shall state whether the project is a multiphase project.  
12 Subject to the limitation provided under subsection (31), the  
13 chairperson of the Michigan economic growth authority or his or her  
14 designee is authorized to approve an application or project under  
15 this subsection. Only the chairperson of the Michigan economic  
16 growth authority is authorized to deny an application or project  
17 under this subsection. A project shall be approved or denied not  
18 more than 45 days after receipt of the application. If the  
19 chairperson of the Michigan economic growth authority or his or her  
20 designee does not approve or deny an application within 45 days  
21 after the application is received by the Michigan economic growth  
22 authority, the application is considered approved as written. The  
23 criteria in subsection (7) shall be used when approving projects  
24 under this subsection. When approving projects under this  
25 subsection, priority shall be given to projects on a facility. The  
26 total of all credits for an approved project under this subsection  
27 shall not exceed the amounts authorized under subsection (1)(a). A

1 taxpayer may apply under this subsection instead of subsection (4)  
2 for approval of a project that will be for more than  
3 \$10,000,000.00, but the total of all credits for that project shall  
4 not exceed the amounts authorized under subsection (1)(a). If the  
5 chairperson of the Michigan economic growth authority or his or her  
6 designee approves a project under this subsection, the chairperson  
7 of the Michigan economic growth authority or his or her designee  
8 shall issue a preapproval letter that states that the taxpayer is a  
9 qualified taxpayer; the maximum total eligible investment for the  
10 project on which credits may be claimed and the maximum total of  
11 all credits for the project when the project is completed and a  
12 certificate of completion is issued; and the project number  
13 assigned by the Michigan economic growth authority. If a project is  
14 denied under this subsection, a taxpayer is not prohibited from  
15 subsequently applying under this subsection or subsection (4) for  
16 the same project or for another project.

17 (4) If the cost of a project will be for more than  
18 \$10,000,000.00 and, except as provided in subsection (6)(b), the  
19 project is located in a qualified local governmental unit, a  
20 qualified taxpayer shall apply to the Michigan economic growth  
21 authority for approval of the project. An application under this  
22 subsection shall state whether the project is a multiphase project.  
23 The Michigan economic growth authority shall approve or deny the  
24 project not more than 65 days after receipt of the application. A  
25 project under this subsection shall not be approved without the  
26 concurrence of the state treasurer. If the Michigan economic growth  
27 authority does not approve or deny the application within 65 days

1 after it receives the application, the Michigan economic growth  
2 authority shall send the application to the state treasurer. The  
3 state treasurer shall approve or deny the application within 5 days  
4 after receipt of the application. If the state treasurer does not  
5 deny the application within 5 days after receipt of the  
6 application, the application is considered approved. The Michigan  
7 economic growth authority shall approve a limited number of  
8 projects under this subsection during each calendar year as  
9 provided in subsection (6). The Michigan economic growth authority  
10 shall use the criteria in subsection (7) when approving projects  
11 under this subsection, when determining the total amount of  
12 eligible investment, and when determining the percentage of  
13 eligible investment for the project to be used to calculate a  
14 credit. The total of all credits for an approved project under this  
15 subsection shall not exceed the amount designated in the  
16 preapproval letter, as amended, for that project. If the Michigan  
17 economic growth authority approves a project under this subsection,  
18 the Michigan economic growth authority shall issue a preapproval  
19 letter that states that the taxpayer is a qualified taxpayer; the  
20 percentage of eligible investment for the project determined by the  
21 Michigan economic growth authority for purposes of subsection  
22 (1)(b); the maximum total eligible investment for the project on  
23 which credits may be claimed and the maximum total of all credits  
24 for the project when the project is completed and a certificate of  
25 completion is issued; and the project number assigned by the  
26 Michigan economic growth authority. The Michigan economic growth  
27 authority shall send a copy of the preapproval letter to the

1 department. If a project is denied under this subsection, a  
2 taxpayer is not prohibited from subsequently applying under this  
3 subsection or subsection (3) for the same project or for another  
4 project.

5 (5) If the project is on property that is functionally  
6 obsolete, the taxpayer shall include with the application an  
7 affidavit signed by a level 3 or level 4 assessor, that states that  
8 it is the assessor's expert opinion that the property is  
9 functionally obsolete and the underlying basis for that opinion.

10 (6) The Michigan economic growth authority may approve not  
11 more than 20 projects each calendar year under subsection (4), and  
12 the following limitations apply:

13 (a) Of the 20 projects allowed under this subsection, the  
14 total of all credits for each project may be more than  
15 \$10,000,000.00 but \$30,000,000.00 or less for only 1 project.

16 (b) Of the 20 projects allowed under this subsection, up to 3  
17 projects may be approved for projects that are not in a qualified  
18 local governmental unit if the property is a facility for which  
19 eligible activities are identified in a brownfield plan or, for 1  
20 of the 3 projects, if the property is not a facility but is  
21 functionally obsolete or blighted, property identified in a  
22 brownfield plan. For purposes of this subdivision, a facility  
23 includes a building or complex of buildings that was used by a  
24 state or federal agency and that is no longer being used for the  
25 purpose for which it was used by the state or federal agency.

26 (c) The project allowed under subdivision (a) may also qualify  
27 under subdivision (b).



1           (7) The Michigan economic growth authority shall review all  
2 applications for projects under subsection (4) and, if an  
3 application is approved, shall determine the maximum total of all  
4 credits for that project. Before approving a project for which the  
5 total of all credits will be more than \$10,000,000.00 but  
6 \$30,000,000.00 or less only, the Michigan economic growth authority  
7 shall determine that the project would not occur in this state  
8 without the tax credit offered under subsection (4). The Michigan  
9 economic growth authority shall consider the following criteria to  
10 the extent reasonably applicable to the type of project proposed  
11 when approving a project under subsection (4), and the chairperson  
12 of the Michigan economic growth authority or his or her designee  
13 shall consider the following criteria to the extent reasonably  
14 applicable to the type of project proposed when approving a project  
15 under subsection (2) or (3) or when considering an amendment to a  
16 project under subsection (9):

17           (a) The overall benefit to the public.

18           (b) The extent of reuse of vacant buildings and redevelopment  
19 of blighted property.

20           (c) Creation of jobs.

21           (d) Whether the eligible property is in an area of high  
22 unemployment.

23           (e) The level and extent of contamination alleviated by the  
24 qualified taxpayer's eligible activities to the extent known to the  
25 qualified taxpayer.

26           (f) The level of private sector contribution.

27           (g) The cost gap that exists between the site and a similar

1 greenfield site as determined by the Michigan economic growth  
2 authority.

3 (h) If the qualified taxpayer is moving from another location  
4 in this state, whether the move will create a brownfield.

5 (i) Whether the project is financially and economically sound.

6 (j) Any other criteria that the Michigan economic growth  
7 authority or the chairperson of the Michigan economic growth  
8 authority, as applicable, considers appropriate for the  
9 determination of eligibility under subsection (3) or (4).

10 (8) A qualified taxpayer may apply for projects under this  
11 section for eligible investment on more than 1 eligible property in  
12 a tax year. Each project approved and each project for which a  
13 certificate of completion is issued under this section shall be for  
14 eligible investment on 1 eligible property.

15 (9) If, after a taxpayer's project has been approved and the  
16 taxpayer has received a preapproval letter but before the taxpayer  
17 has made an eligible investment, other than soft costs, at the  
18 property, the taxpayer determines that the project cannot be  
19 completed as preapproved, the taxpayer may petition the Michigan  
20 economic growth authority to amend the project and the preapproval  
21 letter to increase the maximum total eligible investment for the  
22 project on which credits may be claimed and the maximum total of  
23 all credits for the project. A taxpayer may petition the Michigan  
24 economic growth authority to make any other amendments to the  
25 project or preapproval letter at any time before a certificate of  
26 completion is issued. Amendments to the project or preapproval  
27 letter may include, but are not limited to, extending the duration

1 of time provided to complete the project, as long as that extension  
2 does not exceed 10 years from the date of the preapproval letter.

3 (10) A project may be a multiphase project. If a project is a  
4 multiphase project, when each component of the multiphase project  
5 is completed, the taxpayer shall submit documentation that the  
6 component is complete, an accounting of the cost of the component,  
7 and the eligible investment for the component of each taxpayer  
8 eligible for a credit for the project of which the component is a  
9 part to the Michigan economic growth authority or the designee of  
10 the Michigan economic growth authority, who shall verify that the  
11 component is complete. When the completion of the component is  
12 verified, a component completion certificate shall be issued to the  
13 qualified taxpayer which shall state that the taxpayer is a  
14 qualified taxpayer, the credit amount for the component, the  
15 qualified taxpayer's federal employer identification number or the  
16 Michigan treasury number assigned to the taxpayer, and the project  
17 number. The taxpayer may assign all or part of the credit for a  
18 multiphase project as provided in this section after a component  
19 completion certificate for a component is issued. The qualified  
20 taxpayer may transfer ownership of or lease the completed component  
21 and assign a proportionate share of the credit for the entire  
22 project to the qualified taxpayer that is the new owner or lessee.  
23 A multiphase project shall not be divided into more than 10  
24 components. A component is considered to be completed when a  
25 certificate of occupancy has been issued by the local municipality  
26 in which the project is located for all of the buildings or  
27 facilities that comprise the completed component and a component

1 completion certificate is issued or the chairperson of the Michigan  
2 economic growth authority or his or her designee, for projects  
3 approved under subsection (2) or (3), or the Michigan economic  
4 growth authority, for projects approved under subsection (4),  
5 verifies that the component is complete. A credit assigned based on  
6 a multiphase project shall be claimed by the assignee in the tax  
7 year in which the assignment is made. The total of all credits for  
8 a multiphase project shall not exceed the amount stated in the  
9 preapproval letter, as amended, for the project under subsection  
10 (1). If all components of a multiphase project are not completed by  
11 10 years after the date on which the preapproval letter, as  
12 amended, if applicable, for the project was issued, the qualified  
13 taxpayer that received the preapproval letter for the project shall  
14 pay to the state treasurer, as a penalty, an amount equal to the  
15 sum of all credits claimed and assigned for all components of the  
16 multiphase project and no credits based on that multiphase project  
17 shall be claimed after that date by the qualified taxpayer or any  
18 assignee of the qualified taxpayer. The penalty under this  
19 subsection is subject to interest on the amount of the credit  
20 claimed or assigned determined individually for each component at  
21 the rate in section 23(2) of 1941 PA 122, MCL 205.23, beginning on  
22 the date that the credit for that component was claimed or  
23 assigned. As used in this subsection, "proportionate share" means  
24 the same percentage of the total of all credits for the project  
25 that the qualified investment for the completed component is of the  
26 total qualified investment stated in the preapproval letter, as  
27 amended, for the entire project.

(11) When a project under this section is completed, the taxpayer shall submit documentation that the project is completed, an accounting of the cost of the project, the eligible investment of each taxpayer if there is more than 1 taxpayer eligible for a credit for the project, and, if the taxpayer is not the owner or lessee of the eligible property on which the eligible investment was made at the time the project is completed, that the taxpayer was the owner or lessee of, or was a party to an agreement to purchase or lease, that eligible property when all eligible investment of the taxpayer was made. The chairperson of the Michigan economic growth authority or his or her designee, for projects approved under subsection (2) or (3), or the Michigan economic growth authority, for projects approved under subsection (4), shall verify that the project is completed. The Michigan economic growth authority shall conduct an on-site inspection as part of the verification process for projects approved under subsection (4). When the completion of the project is verified, a certificate of completion shall be issued to each qualified taxpayer that has made eligible investment on that eligible property. The certificate of completion shall state the total amount of all credits for the project and that total shall not exceed the maximum total of all credits listed in the preapproval letter for the project under subsection (2), (3), or (4) as applicable and as amended under subsection (9) and shall state all of the following:

(a) That the taxpayer is a qualified taxpayer.

(b) The total cost of the project and the eligible investment

1 of each qualified taxpayer.

2 (c) Each qualified taxpayer's credit amount.

3 (d) The qualified taxpayer's federal employer identification  
4 number or the Michigan treasury number assigned to the taxpayer.

5 (e) The project number.

6 (f) For a project approved under subsection (4) for which the  
7 total of all credits is more than \$10,000,000.00 but \$30,000,000.00  
8 or less, the total of all credits and the schedule on which the  
9 annual credit amount shall be claimed by the qualified taxpayer.

10 (g) For a multiphase project under subsection (10), the amount  
11 of each credit assigned and the amount of all credits claimed in  
12 each tax year before the year in which the project is completed.

13 (12) Except as otherwise provided in this section, qualified  
14 taxpayers shall claim credits under this section in the tax year in  
15 which the certificate of completion is issued. For a project  
16 approved under subsection (4) for which the total of all credits is  
17 more than \$10,000,000.00 but \$30,000,000.00 or less, the qualified  
18 taxpayer shall claim 10% of its approved credit each year for 10  
19 years. A credit assigned based on a multiphase project shall be  
20 claimed in the year in which the credit is assigned.

21 (13) The cost of eligible investment for leased machinery,  
22 equipment, or fixtures is the cost of that property had the  
23 property been purchased minus the lessor's estimate, made at the  
24 time the lease is entered into, of the market value the property  
25 will have at the end of the lease. A credit for property described  
26 in this subsection is allowed only if the cost of that property had  
27 the property been purchased and the lessor's estimate of the market

1 value at the end of the lease are provided to the Michigan economic  
2 growth authority.

3 (14) Credits claimed by a lessee of eligible property are  
4 subject to the total of all credits limitation under this section.

5 (15) Each qualified taxpayer and assignee under subsection  
6 (20), (21), or (22) that claims a credit under this section shall  
7 attach a copy of the certificate of completion and, if the credit  
8 was assigned, a copy of the assignment form provided for under this  
9 section to the annual return filed under this act on which the  
10 credit under this section is claimed. An assignee of a credit based  
11 on a multiphase project shall attach a copy of the assignment form  
12 provided for under this section and the component completion  
13 certificate provided for in subsection (10) to the annual return  
14 filed under this act on which the credit is claimed but is not  
15 required to file a copy of a certificate of completion.

16 (16) Except as otherwise provided in this subsection or  
17 subsection (10), (18), (20), (21), or (22), a credit under this  
18 section shall be claimed in the tax year in which the certificate  
19 of completion is issued to the qualified taxpayer. For a project  
20 described in subsection (11)(f) for which a schedule for claiming  
21 annual credit amounts is designated on the certificate of  
22 completion by the Michigan economic growth authority, the annual  
23 credit amount shall be claimed in the tax year specified on the  
24 certificate of completion.

25 (17) Except as otherwise provided under this subsection, the  
26 credits approved under this section shall be calculated after  
27 application of all other credits allowed under this act. The

1 credits under this section shall be calculated before the  
2 calculation of the credits under sections 413, 423, 431, and 450.

3 (18) Except as otherwise provided under this subsection, if  
4 the credit allowed under this section for the tax year and any  
5 unused carryforward of the credit allowed under this section exceed  
6 the qualified taxpayer's or assignee's tax liability for the tax  
7 year, that portion that exceeds the tax liability for the tax year  
8 shall not be refunded but may be carried forward to offset tax  
9 liability in subsequent tax years for 10 years or until used up,  
10 whichever occurs first. Except as otherwise provided in this  
11 subsection, the maximum time allowed under the carryforward  
12 provisions under this subsection begins with the tax year in which  
13 the certificate of completion is issued to the qualified taxpayer.  
14 If the qualified taxpayer assigns all or any portion of its credit  
15 approved under this section, the maximum time allowed under the  
16 carryforward provisions for an assignee begins to run with the tax  
17 year in which the assignment is made and the assignee first claims  
18 a credit, which shall be the same tax year. The maximum time  
19 allowed under the carryforward provisions for an annual credit  
20 amount for a credit allowed under subsection (4) begins to run in  
21 the tax year for which the annual credit amount is designated on  
22 the certificate of completion issued under this section. A credit  
23 carryforward available under section 38g of former 1975 PA 228 that  
24 is unused at the end of the last tax year may be claimed against  
25 the tax imposed under **THIS** act for the years the carryforward would  
26 have been available under former 1975 PA 228. Beginning on and  
27 after April 8, 2008, if the credit allowed under this section for



1 the tax year exceeds the qualified taxpayer's tax liability for the  
2 tax year, the qualified taxpayer may elect to have the excess  
3 refunded at a rate equal to 85% of that portion of the credit that  
4 exceeds the tax liability of the qualified taxpayer for the tax  
5 year and forgo the remaining 15% of the credit and any  
6 carryforward.

7 (19) If a project or credit under this section is for the  
8 addition of personal property, if the cost of that personal  
9 property is used to calculate a credit under this section, and if  
10 the personal property is disposed of or transferred from the  
11 eligible property to any other location, the qualified taxpayer  
12 that disposed of that property, or transferred the personal  
13 property shall add the same percentage as determined under  
14 subsection (1) of the federal basis of the personal property used  
15 for determining gain or loss as of the date of the disposition or  
16 transfer to the qualified taxpayer's tax liability under this act  
17 after application of all credits under this act for the tax year in  
18 which the disposition or transfer occurs. If a qualified taxpayer  
19 has an unused carryforward of a credit under this section, the  
20 amount otherwise added under this subsection to the qualified  
21 taxpayer's tax liability may instead be used to reduce the  
22 qualified taxpayer's carryforward under subsection (18).

23 (20) For credits under this section for projects for which a  
24 certificate of completion is issued before January 1, 2006 and  
25 except as otherwise provided in this subsection, if a qualified  
26 taxpayer pays or accrues eligible investment on or to an eligible  
27 property that is leased for a minimum term of 10 years or sold to

1 another taxpayer for use in a business activity, the qualified  
2 taxpayer may assign all or a portion of the credit under this  
3 section based on that eligible investment to the lessee or  
4 purchaser of that eligible property. A credit assignment under this  
5 subsection shall only be made to a taxpayer that when the  
6 assignment is complete will be a qualified taxpayer. All credit  
7 assignments under this subsection are irrevocable and, except for a  
8 credit based on a multiphase project, shall be made in the tax year  
9 in which the certificate of completion is issued, unless the  
10 assignee is an unknown lessee. If a qualified taxpayer wishes to  
11 assign all or a portion of its credit to a lessee but the lessee is  
12 unknown in the tax year in which the certificate of completion is  
13 issued, the qualified taxpayer may delay claiming and assigning the  
14 credit until the first tax year in which the lessee is known. A  
15 qualified taxpayer may claim a portion of a credit and assign the  
16 remaining credit amount. Except as otherwise provided in this  
17 subsection, if the qualified taxpayer both claims and assigns  
18 portions of the credit, the qualified taxpayer shall claim the  
19 portion it claims in the tax year in which the certificate of  
20 completion is issued or, for a credit assigned and claimed for a  
21 multiphase project before a certificate of completion is issued,  
22 the taxpayer shall claim the credit in the year in which the credit  
23 is assigned. If a qualified taxpayer assigns all or a portion of  
24 the credit and the eligible property is leased to more than 1  
25 taxpayer, the qualified taxpayer shall determine the amount of  
26 credit assigned to each lessee. A lessee shall not subsequently  
27 assign a credit or any portion of a credit assigned under this

1 subsection. A purchaser may subsequently assign a credit or any  
2 portion of a credit assigned to the purchaser under this subsection  
3 to a lessee of the eligible property. The credit assignment under  
4 this subsection shall be made on a form prescribed by the Michigan  
5 economic growth authority. The qualified taxpayer shall send a copy  
6 of the completed assignment form to the Michigan economic growth  
7 authority in the tax year in which the assignment is made. The  
8 assignee shall attach a copy of the completed assignment form to  
9 its annual return required to be filed under this act, for the tax  
10 year in which the assignment is made and the assignee first claims  
11 a credit, which shall be the same tax year. In addition to all  
12 other procedures under this subsection, the following apply if the  
13 total of all credits for a project is more than \$10,000,000.00 but  
14 \$30,000,000.00 or less:

15 (a) The credit shall be assigned based on the schedule  
16 contained in the certificate of completion.

17 (b) If the qualified taxpayer assigns all or a portion of the  
18 credit amount, the qualified taxpayer shall assign the annual  
19 credit amount for each tax year separately.

20 (c) More than 1 annual credit amount may be assigned to any 1  
21 assignee and the qualified taxpayer may assign all or a portion of  
22 each annual credit amount to any assignee.

23 (d) The qualified taxpayer shall not assign more than the  
24 annual credit amount for each tax year.

25 (21) Except as otherwise provided in this subsection, for  
26 projects for which a certificate of completion is issued before  
27 January 1, 2006, and except as otherwise provided in this

1 subsection, if a qualified taxpayer is a partnership, limited  
2 liability company, or subchapter S corporation, the qualified  
3 taxpayer may assign all or a portion of a credit under this section  
4 to its partners, members, or shareholders, based on their  
5 proportionate share of ownership of the partnership, limited  
6 liability company, or subchapter S corporation or based on an  
7 alternative method approved by the Michigan economic growth  
8 authority. A credit assignment under this subsection is irrevocable  
9 and, except for a credit assignment based on a multiphase project,  
10 shall be made in the tax year in which a certificate of completion  
11 is issued. A qualified taxpayer may claim a portion of a credit and  
12 assign the remaining credit amount. Except as otherwise provided in  
13 this subsection, if the qualified taxpayer both claims and assigns  
14 portions of the credit, the qualified taxpayer shall claim the  
15 portion it claims in the tax year in which a certificate of  
16 completion is issued or for a credit assigned and claimed for a  
17 multiphase project, before the component completion certificate is  
18 issued, the taxpayer shall claim the credit in the year in which  
19 the credit is assigned. A partner, member, or shareholder that is  
20 an assignee shall not subsequently assign a credit or any portion  
21 of a credit assigned under this subsection. The credit assignment  
22 under this subsection shall be made on a form prescribed by the  
23 Michigan economic growth authority. The qualified taxpayer shall  
24 send a copy of the completed assignment form to the Michigan  
25 economic growth authority in the tax year in which the assignment  
26 is made. A partner, member, or shareholder who is an assignee shall  
27 attach a copy of the completed assignment form to its annual return

1 required under this act, for the tax year in which the assignment  
2 is made and the assignee first claims a credit, which shall be the  
3 same tax year. A credit assignment based on a credit for a  
4 component of a multiphase project that is completed before January  
5 1, 2006 shall be made under this subsection. In addition to all  
6 other procedures under this subsection, the following apply if the  
7 total of all credits for a project is more than \$10,000,000.00 but  
8 \$30,000,000.00 or less:

9 (a) The credit shall be assigned based on the schedule  
10 contained in the certificate of completion.

11 (b) If the qualified taxpayer assigns all or a portion of the  
12 credit amount, the qualified taxpayer shall assign the annual  
13 credit amount for each tax year separately.

14 (c) More than 1 annual credit amount may be assigned to any 1  
15 assignee and the qualified taxpayer may assign all or a portion of  
16 each annual credit amount to any assignee.

17 (d) The qualified taxpayer shall not assign more than the  
18 annual credit amount for each tax year.

19 (22) For projects approved under this section or section 38g  
20 of former 1975 PA 228 for which a certificate of completion is  
21 issued on and after January 1, 2006, a qualified taxpayer may  
22 assign all or a portion of a credit allowed under this section or  
23 section 38g(2), (3), or (33) of former 1975 PA 228 under this  
24 subsection. A credit assignment under this subsection is  
25 irrevocable and, except for a credit assignment based on a  
26 multiphase project, shall be made in the tax year in which a  
27 certificate of completion is issued unless the assignee is an

1 unknown lessee. If a qualified taxpayer wishes to assign all or a  
2 portion of its credit to a lessee but the lessee is unknown in the  
3 tax year in which the certificate of completion is issued, the  
4 qualified taxpayer may delay claiming and assigning the credit  
5 until the first tax year in which the lessee is known. A qualified  
6 taxpayer may claim a portion of a credit and assign the remaining  
7 credit amount. If the qualified taxpayer both claims and assigns  
8 portions of the credit, the qualified taxpayer shall claim the  
9 portion it claims in the tax year in which a certificate of  
10 completion is issued pursuant to this section or section 38g of  
11 former 1975 PA 228. An assignee may subsequently assign a credit or  
12 any portion of a credit assigned under this subsection to 1 or more  
13 assignees. The credit assignment or a subsequent reassignment under  
14 this subsection shall be made on a form prescribed by the Michigan  
15 economic growth authority. The Michigan economic growth authority  
16 or its designee shall review and issue a completed assignment or  
17 reassignment certificate to the assignee or reassignee. An assignee  
18 or subsequent reassignee shall attach a copy of the completed  
19 assignment certificate to its annual return required under this  
20 act, for the tax year in which the assignment or reassignment is  
21 made and the assignee or reassignee first claims a credit, which  
22 shall be the same tax year. A credit assignment based on a credit  
23 for a component of a multiphase project that is completed before  
24 January 1, 2006 shall be made under section 38g(18) of former 1975  
25 PA 228. A credit assignment based on a credit for a component of a  
26 multiphase project that is completed on or after January 1, 2006  
27 may be made under this section. In addition to all other procedures

1 and requirements under this section, the following apply if the  
2 total of all credits for a project is more than \$10,000,000.00 but  
3 \$30,000,000.00 or less:

4 (a) The credit shall be assigned based on the schedule  
5 contained in the certificate of completion.

6 (b) If the qualified taxpayer assigns all or a portion of the  
7 credit amount, the qualified taxpayer shall assign the annual  
8 credit amount for each tax year separately.

9 (c) More than 1 annual credit amount may be assigned to any 1  
10 assignee, and the qualified taxpayer may assign all or a portion of  
11 each annual credit amount to any assignee.

12 (23) A qualified taxpayer or assignee under subsection (20),  
13 (21), or (22) shall not claim a credit under subsection (1)(a) or  
14 (b) based on eligible investment on which a credit claimed under  
15 section 38d of former 1975 PA 228 was based.

16 (24) When reviewing an application for a project for  
17 designation as an urban development area project, the Michigan  
18 economic growth authority for projects approved under subsection  
19 (4) or the chairperson of the Michigan economic growth authority or  
20 his or her designee for projects approved under subsections (2) and  
21 (3) shall consider all of the following criteria:

22 (a) If the project increases the density of the area by  
23 promoting multistory development.

24 (b) If the project promotes mixed-use development and walkable  
25 communities.

26 (c) If the project promotes sustainable redevelopment.

27 (d) If the project addresses areawide redevelopment and

1 includes multiple parcels of property.

2 (e) If the project addresses underserved markets of commerce.

3 (f) Any other criteria determined by the Michigan economic  
4 growth authority or the chairperson of the Michigan economic growth  
5 authority.

6 (25) An eligible taxpayer that claims a credit under this  
7 section is not prohibited from claiming a credit under section 431.  
8 However, the eligible taxpayer shall not claim a credit under this  
9 section and section 431 based on the same costs.

10 (26) Eligible investment attributable or related to the  
11 operation of a professional sports stadium, and eligible investment  
12 that is associated or affiliated with the operation of a  
13 professional sports stadium, including, but not limited to, the  
14 operation of a parking lot or retail store, shall not be used as a  
15 basis for a credit under this section. Professional sports stadium  
16 does not include a professional sports stadium that will no longer  
17 be used by a professional sports team on and after the date that an  
18 application related to that professional sports stadium is filed  
19 under this section.

20 (27) Eligible investment attributable or related to the  
21 operation of a casino, and eligible investment that is associated  
22 or affiliated with the operation of a casino, including, but not  
23 limited to, the operation of a parking lot, hotel, motel, or retail  
24 store, shall not be used as a basis for a credit under this  
25 section. As used in this subsection, "casino" means a casino  
26 regulated by this state pursuant to the Michigan gaming control and  
27 revenue act, 1996 IL 1, MCL 432.201 to 432.226.



1           (28) Eligible investment attributable or related to the  
2 construction of a new landfill or the expansion of an existing  
3 landfill regulated under part 115 of the natural resources and  
4 environmental protection act, 1994 PA 451, MCL 324.11501 to  
5 324.11550, shall not be used as a basis for a credit under this  
6 section.

7           (29) The Michigan economic growth authority annually shall  
8 prepare and submit to the house of representatives and senate  
9 committees responsible for tax policy and economic development  
10 issues a report on the credits under subsections (2), (3), and (4).  
11 The report shall include, but is not limited to, all of the  
12 following:

13           (a) A listing of the projects under subsections (2), (3), and  
14 (4) that were approved in the calendar year.

15           (b) The total amount of eligible investment for projects  
16 approved under subsections (2), (3), and (4) in the calendar year.

17           (30) For purposes of this section, taxpayer includes a person  
18 subject to the tax imposed under chapters 2A and 2B.

19           (31) For the 2008 calendar year, the total of all credits for  
20 all projects approved under subsection (2) or (3) shall not exceed  
21 \$63,000,000.00. For each calendar year after 2008, the total of all  
22 credits for all projects approved under subsection (2) or (3) shall  
23 not exceed \$40,000,000.00. If the Michigan economic growth  
24 authority approves a total of all credits for all projects under  
25 subsection (2) or (3) of less than \$40,000,000.00 in a calendar  
26 year, the Michigan economic growth authority may carry forward for  
27 1 year only the difference between \$40,000,000.00 and the total of

1 all credits for all projects under this subsection approved in the  
2 immediately preceding calendar year.

3 (32) As used in this section:

4 (a) "Annual credit amount" means the maximum amount that a  
5 qualified taxpayer is eligible to claim each tax year for a project  
6 for which the total of all credits is more than \$10,000,000.00 but  
7 \$30,000,000.00 or less, as approved under subsection (4).

8 (b) "Authority" means a brownfield redevelopment authority  
9 created under the brownfield redevelopment financing act, 1996 PA  
10 381, MCL 125.2651 to 125.2672.

11 (c) "Blighted", "brownfield plan", "eligible activities",  
12 "facility", "functionally obsolete", "qualified local governmental  
13 unit", and "response activity" mean those terms as defined in the  
14 brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651  
15 to 125.2672.

16 (d) "Eligible investment" or "eligible investments" means,  
17 when made after the approval date of the brownfield plan but in any  
18 event no earlier than 90 days prior to the date of the preapproval  
19 letter, any demolition, construction, restoration, alteration,  
20 renovation, or improvement of buildings or site improvements on  
21 eligible property and the addition of machinery, equipment, and  
22 fixtures to eligible property after the date that eligible  
23 activities on that eligible property have started pursuant to a  
24 brownfield plan under the brownfield redevelopment financing act,  
25 1996 PA 381, MCL 125.2651 to 125.2672, if the costs of the eligible  
26 investment are not otherwise reimbursed to the taxpayer or paid for  
27 on behalf of the taxpayer from any source other than the taxpayer.

1 The addition of leased machinery, equipment, or fixtures to  
2 eligible property by a lessee of the machinery, equipment, or  
3 fixtures is eligible investment if the lease of the machinery,  
4 equipment, or fixtures has a minimum term of 10 years or is for the  
5 expected useful life of the machinery, equipment, or fixtures, and  
6 if the owner of the machinery, equipment, or fixtures is not the  
7 qualified taxpayer with regard to that machinery, equipment, or  
8 fixtures. For projects approved after April 8, 2008, eligible  
9 investment does not include certain soft costs of the eligible  
10 investment as determined by the Michigan economic growth authority,  
11 including, but not limited to, developer fees, appraisals,  
12 performance bonds, closing costs, bank fees, loan fees, risk  
13 contingencies, financing costs, permanent or construction period  
14 interest, legal expenses, leasing or sales commissions, marketing  
15 costs, professional fees, shared savings, taxes, title insurance,  
16 bank inspection fees, insurance, and project management fees.  
17 Notwithstanding the foregoing, eligible investment does include  
18 architectural, engineering, surveying, and similar professional  
19 fees.

20 (e) "Eligible property", except as otherwise provided under  
21 subsection (33), means property for which eligible activities are  
22 identified under a brownfield plan that was used or is currently  
23 used for commercial, industrial, public, or residential purposes,  
24 including personal property located on the property, to the extent  
25 included in the brownfield plan, and that is 1 or more of the  
26 following:

27 (i) Is in a qualified local governmental unit and is a

1 facility, functionally obsolete, or blighted and includes parcels  
2 that are adjacent or contiguous to that property if the development  
3 of the adjacent and contiguous parcels is estimated to increase the  
4 captured taxable value of that property.

5 (ii) Is not in a qualified local governmental unit and is a  
6 facility, and includes parcels that are adjacent or contiguous to  
7 that property if the development of the adjacent and contiguous  
8 parcels is estimated to increase the captured taxable value of that  
9 property.

10 (iii) Is tax reverted property owned or under the control of a  
11 land bank fast track authority.

12 (f) "Last tax year" means the taxpayer's tax year under former  
13 1975 PA 228 that begins after December 31, 2006 and before January  
14 1, 2008.

15 (g) "Michigan economic growth authority" means the Michigan  
16 economic growth authority created in the Michigan economic growth  
17 authority act, 1995 PA 24, MCL 207.801 to 207.810.

18 (h) "Multiphase project" means a project approved under this  
19 section that has more than 1 component, each of which can be  
20 completed separately.

21 (i) "Personal property" means that term as defined in section  
22 8 of the general property tax act, 1893 PA 206, MCL 211.8, except  
23 that personal property does not include either of the following:

24 (i) Personal property described in section 8(h), (i), or (j) of  
25 the general property tax act, 1893 PA 206, MCL 211.8.

26 (ii) Buildings described in section 14(6) of the general  
27 property tax act, 1893 PA 206, MCL 211.14.

1 (j) "Project" means the total of all eligible investment on an  
2 eligible property or, for purposes of subsection (6)(b), 1 of the  
3 following:

4 (i) All eligible investment on property not in a qualified  
5 local governmental unit that is a facility.

6 (ii) All eligible investment on property that is not a facility  
7 but is functionally obsolete or blighted.

8 (k) "Qualified local governmental unit" means that term as  
9 defined in the obsolete property rehabilitation act, 2000 PA 146,  
10 MCL 125.2781 to 125.2797.

11 (l) "Qualified taxpayer" means a taxpayer that meets both of  
12 the following criteria:

13 (i) Owns, leases, or has entered into an agreement to purchase  
14 or lease eligible property.

15 (ii) Certifies that, except as otherwise provided in this  
16 subparagraph, the department of ~~environmental quality~~ **NATURAL**  
17 **RESOURCES** has not sued or issued a unilateral order to the taxpayer  
18 pursuant to part 201 of the natural resources and environmental  
19 protection act, 1994 PA 451, MCL 324.20101 to 324.20142, to compel  
20 response activity on or to the eligible property, or expended any  
21 state funds for response activity on or to the eligible property  
22 and demanded reimbursement for those expenditures from the  
23 qualified taxpayer. However, if the taxpayer has completed all  
24 response activity required by part 201 of the natural resources and  
25 environmental protection act, 1994 PA 451, MCL 324.20101 to  
26 324.20142, is in compliance with any deed restriction or  
27 administrative or judicial order related to the required response

1 activity, and has reimbursed the state for all costs incurred by  
2 the state related to the required response activity, the taxpayer  
3 meets the criteria under this subparagraph.

4 (m) "Urban development area project" means a project located  
5 on eligible property in the downtown or traditional central  
6 business district of a qualified local governmental unit or county  
7 seat or along a traditional commercial corridor of a qualified  
8 local governmental unit or county seat as determined by the  
9 Michigan economic growth authority or the chairperson of the  
10 Michigan economic growth authority or his or her designee.

11 (33) For purposes of subsection (2), eligible property means  
12 that term as defined under subsection (32)(e) except that all of  
13 the following apply:

14 (a) Eligible property means property identified under a  
15 brownfield plan that was used or is currently used for commercial,  
16 industrial, public, or residential purposes and that is 1 of the  
17 following:

18 (i) Property for which eligible activities are identified under  
19 the brownfield plan, is in a qualified local governmental unit, and  
20 is a facility, functionally obsolete, or blighted.

21 (ii) Property that is not in a qualified local governmental  
22 unit but is within a downtown development district established  
23 under 1975 PA 197, MCL 125.1651 to 125.1681, and is functionally  
24 obsolete or blighted, and a component of the project on that  
25 eligible property is 1 or more of the following:

26 (A) Infrastructure improvements that directly benefit the  
27 eligible property.

1 (B) Demolition of structures that is not response activity  
2 under section 20101 of the natural resources and environmental  
3 protection act, 1994 PA 451, MCL 324.20101.

4 (C) Lead or asbestos abatement.

5 (D) Site preparation that is not response activity under  
6 section 20101 of the natural resources and environmental protection  
7 act, 1994 PA 451, MCL 324.20101.

8 (iii) Property for which eligible activities are identified  
9 under the brownfield plan, is not in a qualified local governmental  
10 unit, and is a facility.

11 (b) Eligible property includes parcels that are adjacent or  
12 contiguous to the eligible property if the development of the  
13 adjacent or contiguous parcels is estimated to increase the  
14 captured taxable value of the property or tax reverted property  
15 owned or under the control of a land bank fast track authority  
16 pursuant to the land bank fast track act, 2003 PA 258, MCL 124.751  
17 to 124.774.

18 (c) Eligible property includes, to the extent included in the  
19 brownfield plan, personal property located on the eligible  
20 property.

21 (d) Eligible property does not include qualified agricultural  
22 property exempt under section 7ee of the general property tax act,  
23 1893 PA 206, MCL 211.7ee, from the tax levied by a local school  
24 district for school operating purposes to the extent provided under  
25 section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.

26 Enacting section 1. This amendatory act does not take effect  
27 unless Senate Bill No. 807

1 of the 95th Legislature is enacted into law.